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Reply to:

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Hon. Dr Andrew Leigh
Assistant Manager for Competition
Parliament House
CANBERRA ACT 2600

BY EMAIL: andrew.leigh.mp@aph.gov.au
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Dear Dr Leigh

Concentration and Lack of Competition in the Agricultural Sector

I write on my own account and not on behalf of any client.

I read with interest the article in the Age newspaper 2 November 2024 by Millie Muroi, entitled "Finding it Hard to Stomach Higher Prices". The article referred to your examination of the lack of competition and the degree of concentration in agricultural industries, leading in many cases to farmer suppliers being squeezed.

A number of specific examples of concentration were mentioned in the article, but I was surprised that there was no mention of the chicken meat industry. I have had legal involvement in the chicken meat industry for over 30 years, this experience extending to all States.

In my opinion, of all the agricultural sectors, there is the greatest degree of concentration and lack of competition in the chicken meat industry, which has led to economically unhealthy outcomes and exposed to the industry systematically to instability.

In support of my contention the following is relevant:

1. On a consumption basis, chicken meat is by far the most consumed meat in Australia.
2. Over 70% of the chicken meat production in Australia is in the hands of two companies, Inghams and Baiada. Of these Baiada probably has the greater share. Inghams is a listed company but Baiada is family owned and controlled.
3. Both Inghams and Baiada are vertically integrated businesses covering the whole chain of production from breeding stock through egg production, hatching, growing, processing and value adding to sale of the consumable products, the predominant customers being the supermarket duopoly of Coles and Woolworths.
4. Coles and Woolworths hedge their bets to some extent, but historically Baiada has been the main processor supplier to Coles and Inghams has been the main processor supplier to Woolworths.
5. Inghams and Baiada each has sufficient national control over such matters in the production process as genetic stock, feed mills and infrastructure as to make it difficult for any substantial new player to become competitive with them in their

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principal markets. The few other smaller processors skirt around the fringes of these markets.

6. The only step in the processor production process which is not directly owned by Baiada or Inghams is the growing phase which is outsourced to contract growers who, apart from providing growing services, provide properties, specialist sheds and equipment. The two processors would otherwise have to make capital investment running into hundreds of millions of dollars. The building costs of the specialist sheds are now well over \$1million per shed.
7. Growers are essentially captive to the processor to whom they are contracted. As the businesses of Inghams and Baiada have become national rather than State based, Inghams and Baiada have tended to concentrate their respective growing and processing activities in particular parts of Australia. Baiada ceased these activities in Victoria and Queensland and Inghams similarly exited New South Wales. Most growers do not have an alternate processor and there is virtually no competitive market for growing services. A grower switching processor is a comparatively rare event. As a result of the lack of alternatives, growers have very little or no bargaining power. Growers sign the processor growing contracts because they have to if they want to continue to be able to grow chickens.
8. Coles and Woolworths have been able to contain price rises in chicken meat by their power over their respective processor supplier, and given the narrow concentrated chain of supply this travels directly to the growers, growing fees being the one cost processors can control, as growers are necessarily price takers. In recent months Inghams lost a significant part of its Woolworths market to Baiada. The shockwaves were quickly felt down the chain to growers, with implications for growers in terms of contract security and even pricing.
9. Provisions in growing fees for periodic review of growing fees are restricted and fail to address the deterioration in the value of the growing fees over a life of a 5 or 10 year contract, growing fees which in most cases coming off a low commencing base. The disconnect between rising costs over a period of years and the level of growing fees has created issues which in my opinion threaten the stability of the industry. Firstly, the cost of the specialist shedding required is such that the cost cannot be amortised and a commercial rate of return achieved. Despite projections that significant amounts of new shedding are urgently required to meet the forecast rate of chicken meat consumption over the next few years, no new shedding projects of any significance have gone ahead. Secondly, with respect to existing farms, growing chickens requires a continual process of investment in infrastructure upgrades and renewals. The processors have requirements in this respect and periodically introduce new requirements. The current fee levels are a serious disincentive for growers to invest in their farms to the extent necessary to achieve satisfactory performance levels. The return is not there, and there is much grower unrest about this.

It is pleasing that you have highlighted the effect on farmers of these issues of concentration and lack of competition across the agricultural sector, and my comments above hopefully draw attention to a particularly egregious example. As I have suggested above it is alarming that such a large staple industry should be in so few controlling hands at every step along the whole production and retail process. The distortions which result have led to an

economically unhealthy situation at the bottom of the chain that have wider implications on the stability of the whole industry.

Might I respectfully suggest that the government has an opportunity before it to restore some sort of balance to this industry. As you may be aware, after years of grower complaints to the ACCC about the imbalance of bargaining power between growers and processors, and the resulting exploitation by processors of that imbalance, in 2020 the ACCC in the Perishable Agricultural Goods Inquiry confirmed that there were serious concerns in this respect about the chicken meat industry and the impacts on market transparency, competition and the economy. The ACCC also endorsed mandatory codes to address such situations in the absence of any other legislative or regulatory effective measures. Following this Inquiry the Department of Agriculture Fisheries and Forestry funded the undertaking of a project "Exploring the potential for a Code of Conduct to increase market transparency and competition in Australian poultry meats supply chains". The project was coordinated by the National Farmers Federation and overseen by an advisory committee made up of representatives across all aspects of the supply chain. There was a process of national consultation during 2023. After extensive analysis of the industry and available regulatory tools, the final report concluded that the most effective mechanism to address the issues was a mandatory Code of Conduct. The final report provided a proposed code for adoption.

The report included a legal analysis of the proposed Code provided by me.

The final report was provided to Government on 24 April 2024 but there has been no response. My understanding is that since the report was provided to Government representatives of the Australian Chicken Growers Council have been continuously knocking on doors in Canberra, but despite an absence of negative responses, no action has been taken with respect to the report. It might fairly be said that there has been quite a lot of duck showing going on.

The taxpayers have invested quite a lot of money in this process to date and it would be very disappointing if the system of government, and how it works in practice, allowed this investment to wither on the vine through a lack of willingness at the appropriate level to accept the responsibility of progressing it.

I write in the hope that you may be able to assist, as you are aware of the problems of concentration and lack of competition in the agricultural sector.

Yours faithfully

Nevett *ford*



Andrew Lumb
Special Counsel